

HOUSE BILL 3377
By Fitzhugh

AN ACT to amend Tennessee Code Annotated,
Title 8, Chapter 50, relative to the creation
of an investment trust for certain post
employment benefits offered by
governmental entities.

WHEREAS, the Governmental Accounting Standards Board issued Statements 43 and 45, which set forth standards on accounting and reporting for post employment benefits (other than pensions) by governmental entities; and

WHEREAS, these new standards will require governmental employers to account for such post employment benefits on an actuarial basis during an employee's career rather than on a pay-as-you-go basis during retirement; and

WHEREAS, it is beneficial to the State to assist Tennessee governmental entities that offer other post employment benefits by creating an investment trust whereby such governmental entities may begin financing those benefits in advance; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 50, is amended by adding a new part thereto as follows:

8-50-1201. Short title. This part shall be known and may be cited as the "Other Post Employment Benefit Investment Trust Act of 2006".

8-50-1202. Definitions. As used in this part, unless the context otherwise requires:

(1) "Board" means the board of trustees created pursuant to § 8-50-1204;

(2) "Other post employment benefits" or "post employment benefits" means non-pension benefits paid on behalf of former employees or the former employees' beneficiaries after separation from service. Such benefits may include, but shall not be limited to, medical, prescription drugs, dental, vision, hearing, Medicare Part B or Part D premiums, life insurance, long-term care, and long-term disability;

(3) "Participating employer" means any political subdivision that has been authorized by the board to finance its post employment benefits through the investment trust created pursuant to this part. "Participating employer" shall also mean the state of Tennessee provided the conditions of § 8-50-1217(a) have been met; and

(4) "Political subdivision" means any Tennessee local governmental entity including, but not limited to, any municipality, metropolitan government, county, utility district, school district, public building authority, and development district created and existing pursuant to the laws of Tennessee, or any instrumentality of government created by any one (1) or more of the named local governmental entities or by an act of the general assembly.

8-50-1203. Establishment of Trust.

(a) There is hereby established a trust called the "Other Post Employment Benefit Investment Trust" (herein referred to as the "Trust" or "Investment Trust") for the purpose of pre-funding other post employment benefits accrued by employees of participating employers, to be paid as they come due in accordance with the arrangements between the employers, the plan members and their beneficiaries.

(b) The assets of the trust are irrevocable, and shall be preserved, invested and expended solely pursuant to and for the purposes of this part and shall not be loaned or

otherwise transferred or used for any other purpose. The assets of the funds shall be expended solely to:

(1) Make payments for other post employment benefits pursuant to and in accordance with the terms of the participating employers' respective post employment benefit plans; and

(2) Pay the cost of administering the trust pursuant to § 8-50-1208.

(c) The investment trust shall have the powers, privileges and immunities of a corporation and all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purpose for which received.

8-50-1204. Creation of board of trustees; members. (a) The general administration and responsibility for the proper operation of the investment trust in accordance with this part shall be governed by a board of trustees. The board of trustees shall consist of nineteen (19) members as follows:

(1) The state treasurer, ex officio;

(2) The director of the Tennessee consolidated retirement system created pursuant to § 8-34-201, ex officio;

(3) The commissioner of finance and administration, ex officio;

(4) The comptroller of the treasury, ex officio;

(5) The administrative director of the courts, ex officio;

(6) The commissioner of personnel, ex officio;

(7) The secretary of state, ex officio;

(8) The chair and vice chair of the council on pensions and insurance, ex officio; but whose membership is qualified as follows:

(A) Such members shall not be voting members of the board of trustees;
and

(B) Such members shall be entitled to receive expenses and mileage allowance at the same rate as provided by § 3-1-106 for each meeting of the board of trustees;

(9) Three (3) members who are teachers as such term is defined in § 8-34-101(46):

(A) The three (3) teacher trustees shall be elected by the representative assembly of the Tennessee Education Association, and shall not be from the same grand division of the state;

(B) To provide for staggered terms, the teacher member elected from east, middle and west Tennessee shall serve a three (3), two (2), and one (1) year term, respectively; thereafter, terms shall be for three (3) years;

(10) Two (2) members who are state employees, not from the same department, commission, board, agency or institution, or any department represented by an ex officio member who shall serve for a term of three (3) years. The two (2) state employee trustees shall be elected by state employees in accordance with rules and procedures as the board of trustees shall prescribe;

(11) One (1) member who shall be appointed by the board of directors of the Tennessee County Services Association to serve for a period of two (2) years;

(12) One (1) member who shall be appointed by the board of directors of the Tennessee Municipal League to serve for a period of two (2) years;

(13) One (1) member who shall be appointed by the board of directors of the County Officials Association of Tennessee to serve for a period of two (2) years;

(14) One (1) retired state or higher education employee who shall be appointed by the governor to serve for a period of two (2) years; and

(15) One (1) retired teacher who shall be elected at large by the representative assembly of the Tennessee retired teachers association to serve for a three (3) years.

The retired teacher shall be a non-voting member of the board of trustees.

(b) Except for ex officio members, all persons shall be fully vested members of the Tennessee consolidated retirement system in order to qualify to serve on the board of trustees. The state treasurer shall serve as chair of the board.

(c) Members of the board shall serve without compensation but shall receive reasonable reimbursement for actual and necessary travel expenses in accordance with the travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) A majority of the voting members of the board serving shall constitute a quorum for the transaction of business at a meeting of the board. Voting upon action taken by the board shall be conducted by a majority vote of the voting members present at the meeting of the board. The board shall meet at the call of the chair and as may be otherwise provided in any rules or regulations promulgated by the board.

(e) The business of the board shall be conducted at meetings of the board held in compliance with title 8, chapter 44.

(f) The board is attached for administrative purposes to the department of the treasury.

(g) The board may delegate to the state treasurer the duty to carry out the day-to-day operations and responsibilities of the trust. In exercising such delegation, the state treasurer shall be authorized to exercise such powers as are vested in the board which are necessary to fulfill the delegated duties and responsibilities, and may assign any

such duties and responsibilities to the state treasurer's staff as the state treasurer deems necessary and proper.

(h) In the event of death or resignation of a board member who is either a teacher or state employee, the board of trustees is authorized to appoint a member from the group represented by the deceased or resigned member to fill such member's unexpired term.

8-50-1205. Legal counsel. (a) The attorney general and reporter or an assistant designated by the attorney general and reporter shall be the legal advisor of the board of trustees.

(b) Notwithstanding any other provision of law, in cases where the interest of the trust requires additional counsel to the attorney general and reporter, the chair of the board of trustees, with the approval of the attorney general and reporter, is authorized to employ such additional counsel.

8-50-1206. Board; powers and duties. In addition to the powers granted by any other provisions of this part, the board shall have the powers necessary or convenient to carry out the purposes and provisions of this part and the purposes and objectives of the investment trust including, but not limited to, the following express powers:

(1) Invest any funds of the trust in any instrument, obligation, security, or property that constitutes legal investments for assets of the Tennessee consolidated retirement system as described in § 8-37-104;

(2) Contract for the provision of all or any part of the services necessary for the management and operation of the investment trust;

(3) Contract with financial consultants, auditors, and other consultants as necessary to carry out its responsibilities under this part;

(4) Contract with an actuary or actuaries for the benefit of any participating employer who may need advice or assistance in determining the level of funding necessary by that employer to fund the other post employment benefits offered by the employer. The employer shall be responsible for the cost of this assistance;

(5) Define reasonable terms and conditions under which funds may be deposited and withdrawn from the trust for the payment of other post employment benefits offered by participating employers; and

(6) Promulgate reasonable substantive and procedural rules as are necessary to carry out the purpose and intent of this part. Such rules shall be adopted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

8-50-1207. Audit. The records of the trust and the records of participating employers in the trust shall be subject to audit by the comptroller of treasury.

8-50-1208. Proration of costs among employers. The cost of administering the trust shall be prorated among all participating employers and deducted from each employer's account in the trust. The board of trustees shall establish the method for prorating such cost among the participating employers.

8-50-1209. Legislative oversight. The council on pensions and insurance created by § 3-9-101 shall be the legislative committee with oversight of the investment trust.

8-50-1210. Custodian of funds; disbursements. The state treasurer shall be the custodian of the trust funds, and the facilities and employees of the state treasurer shall be used and employed in the administration of the funds including, but not limited to, the management of bank accounts and other investments, the transfer of funds, and the safekeeping of securities evidencing investments.

8-50-1211. Investments. The board shall establish an investment policy for the trust. The board may authorize assets of the trust funds to be invested in any

instrument, obligation, security, or property that constitutes legal investments for assets of the Tennessee consolidated retirement system. The board may authorize assets of the funds to be pooled for investment purposes with the assets of the Tennessee consolidated retirement system or any other assets under the custody of the state treasurer.

8-50-1212. Powers of fund trustees. Subject to the limitations in § 8-50-1211, the board, or its nominee, has full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities or investments in which the assets of the trust have been invested, as well as of the proceeds of such investments and any moneys belonging to the trust.

8-50-1213. Transaction of business; nominees. All of the board's business shall be transacted, all of the trust funds invested, all warrants for money drawn, any payments made, and all of the cash and securities and other property of the trust shall be held:

(1) In the name of the board;

(2) In the name of its nominee; provided, that the nominee is authorized by board resolution solely for the purpose of facilitating the transfer of securities and restricted to members of the board, or a partnership composed of any such members; or

(3) For the account of the board or its nominee in such forms as are standard in the investment community for the timely transaction of business or ownership identification, such as book entry accounts.

8-50-1214. Personal interest in investments prohibited. Except as otherwise provided, no board member nor employee of the board shall have any personal interest in the gains or profits of any investment made by the board; nor shall any board

member or employee of the board, directly or indirectly, for such member or employee or as an agent, in any manner for such member or employee or as an agent, in any manner use the same except to make such current and necessary payments as are authorized by the board.

8-50-1215. Delegation to treasurer of implementation of policy.

(a) Implementation of the policies established by the board may be delegated by the board to the state treasurer who shall put such policies into effect.

(b) Subject to the delegation of the board, the state treasurer shall have full power to invest and reinvest the assets of the trust funds.

8-50-1216. Exemption of assets and benefits from execution, garnishment and assignment. Notwithstanding any law to the contrary, all assets, income and distributions of the investment trust shall be protected against the claims of creditors of the participating employers, plan administrators, and plan participants, and shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other process whatsoever, nor shall any assignment thereof be enforceable in any court.

8-50-1217. Participating employers.

(a) The State of Tennessee shall become a participating employer in the trust in the event that advance funding of other post employment benefits is mandated or otherwise elected by the General Assembly.

(b) A political subdivision as defined in § 8-50-1202 (4) may elect to become a participating employer in the trust by resolution legally adopted and approved by its chief legislative body, provided that such participation shall be subject to the approval of the board of trustees and in conformity with such rules, regulations and policies as may be

prescribed by the board. Except as may otherwise be provided in this part, any such election shall be irrevocable.

(c) Any political subdivision that elects to fund its other post employment benefits in advance must become a participating employer in the trust unless such political subdivision makes application to the board to establish a separate investment trust for the financing of those benefits and the board approves such application. The political subdivision shall provide the board with such information as the board determines necessary to review the application.

8-50-1218. Contributions to trust.

(a) It shall be the sole and exclusive responsibility of each participating employer to determine the level of contributions the employer will make to the trust for the purpose of financing the post employment benefits accrued by its respective employees. Neither the trust, the board nor the state shall be responsible for determining the level of contributions needed by a political subdivision to finance any post employment benefits offered by the political subdivision.

(b) Funds in the trust may be consolidated for investment purposes pursuant to § 8-50-1211; provided, the board shall establish and maintain a separate account in the trust for each participating employer that shows the individual transactions and assets attributable to such employer. All investments of the trust belong jointly to the participating employers and the participating employers will share capital gains, income, and losses pro rata.

8-50-1219. Withdrawals for payment of other post employment benefits.

(a) The board shall upon the request of a participating employer reimburse the employer for payments made for other post employment benefits upon the board's

receipt of certified documentation evincing the payment. Such payments shall be made by the board on no more than a quarterly basis.

(b) Notwithstanding anything in this part to the contrary, the board shall not honor a request for reimbursement made by a participating employer under this section if assets credited to that employer's account are not equal to or greater than the amount requested. Retroactive payments shall be paid by the board upon accumulation of sufficient assets.

(c) Nothing in this part shall be construed to define or otherwise grant any rights or privileges to other post employment benefits. Such rights and privileges, if any, shall be governed by the terms of the participating employers' respective post employment benefit plan.

8-50-1220. Transfers from trust. Any political subdivision that elects to become a participating employer under this part may file with the board a resolution duly adopted by its chief legislative body requesting that the assets in its account be transferred to another qualified trust established for the purpose of financing its other post employment benefits. The political subdivision shall provide the board with such information as the board determines necessary to review the request.

SECTION 2. For the purpose of promulgating rules, the provisions of this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2007, the public welfare requiring it.